

Senate Judiciary Committee Hearing on SB 827

Testimony of Citizens Alliance on Prisons and Public Spending March 2, 2010

Good afternoon, Chairman Kuipers and members of the committee. My name is Barbara Levine and I am the executive director of CAPPs, the Citizens Alliance on Prisons and Public Spending.

I would like to begin by saying how encouraged we are by the decline in the prisoner population. We know the parole board has been working hard to release more people who are past their earliest release dates. When we did research in 2003 on the number of people eligible for parole, including parolable lifers it was nearly 35% of the population. Now that same figure, excluding people with paroles granted who are just finishing up programs, is apparently down to about 23%. Certainly that is substantial progress.

We are also encouraged by the work of the Council of State Governments Justice Center and by Senator Cropsey's willingness to put their proposals into bill form. SB 827 incorporates a number of concepts we have long advocated, including a presumption of parole at the minimum, limits on how long technical parole violators should be incarcerated, and a prohibition on holding people to their maximums, then releasing them into the community with no supervision or support. Making these concepts part of the public debate on corrections reform is a very big step forward.

Nonetheless, we all know the devil is in the details and we have a number of concerns about the details of SB 827. Most of these concerns are reflected in the analysis of the CSG proposals that we prepared in January 2009. A copy of that analysis has been provided to each committee member.

It appears that the presumption of parole at the minimum embodied in SB 827 would apply to current prisoners. That is, it would not be prospective as initially recommended. Assuming that's true, our biggest concern is with excluding people from the presumption because their offenses carry a potential maximum sentence of life. I want to be clear on how this would work.

Under Michigan law, except for first-degree murder, all the most serious offenses carry a maximum sentence of life or any term. For these crimes, the sentencing judge can impose a life sentence or can set both a minimum and maximum. In many cases, depending on the offender's prior record and the specific facts of the offense, the sentencing guidelines range doesn't even include life as an option. These offenses include second-degree murder, armed robbery, criminal sexual conduct, assault with intent to commit any of these crimes, and a number of other less common crimes. In 2008, nearly 17,000 Michigan prisoners were serving for these offenses. More than half had minimum terms of 15 years or less. More than a third had minimums of 10 years or less. A table showing a breakdown of these totals by offense type is attached to my testimony.

In addition, Michigan statutes allow prosecutors to charge people who have prior felony convictions as habitual offenders in order to have their sentences enhanced. If someone convicted of an offense that carries a statutory maximum of five years or more has three prior felonies of any kind, no matter how old, he or she can be sentenced to life or any term. We can't tell from the MDOC statistical report how many current prisoners were sentenced as habitual offenders or what their sentences actually are. But there are plenty of them, usually property offenders who have been in and out of prison for previous property crimes.

Under SB 827, subject to certain exceptions, parole would presumptively occur when people have served their minimum terms. One of the exceptions is that the presumption does not apply to anyone whose offense carries a statutory maximum of life or any term, no matter what the actual sentence was or what the person's actual re-offense risk is. In 2008, when the prisoner population was roughly 49,000, the presumption would not have applied to about 35% of all prisoners.

To fully appreciate the consequences of this exception, we have to consider why a presumption is needed in the first place. We have had a risk assessment instrument called the parole guidelines since 1992. The statute currently says that if someone scores high probability of release on those guidelines, meaning they present a very low risk for committing a violent offense, the board has to have a substantial and compelling reason for denying release. Nonetheless, at least until very recently, the board routinely denied parole to people with high probability scores based solely on the nature of the offense.

For instance, in 2006, the board denied release to nearly 3,000 people who had high probability scores. Denial rates varied dramatically by offense group. Of the drug and nonviolent offenders, 13% or fewer were denied. However, despite their low statistical risk for reoffending, the board found substantial and compelling reasons to continue 72% of the homicide offenders and 87% of the sex offenders. That is, the board was essentially ignoring both its own risk assessment instrument and the statutory mandate in order to avoid releasing people who had served their minimums for certain types of offenses. It was able to do this for two reasons. One is the commonly held belief that someone who once committed an assaultive offense, no matter how long ago, is forever dangerous. The other is that prisoners have no right to appeal parole board decisions, so they have no opportunity to get the statute enforced in court.

If there was a presumption of release that applied to all prisoners, and if there was a means of enforcing that presumption, then only those who were actually at high risk of reoffending or who had poor institutional records would be denied release once they served their minimum sentences. However a presumption that excludes people convicted of life maximum offenses actually perpetuates the problem. In fact, it makes things worse. SB 872 actually eliminates the "substantial and compelling reasons" standard for departing from the parole guidelines and expressly permits the sheer fact that someone was convicted of an offense that carries life or any term as a reason for denying parole.

As proposed in SB 872, the presumption would primarily protect the people who currently get released on their minimum anyway. To be sure, it would also give greater protection to people whose offenses carry 15-year maximums, like CSC 3rd, unarmed robbery and manslaughter. But those whose offenses are punishable by life or any term would have no protection against arbitrary or even irrational parole denials, no matter how situational their offenses or how long they served or what their sentencing judges intended or how well they've done in prison or how demonstrably safe they are to release.

A statutory presumption that applies to all offenders would restore the meaning of the minimum sentence. Now, the judge imposes the minimum based on sentencing guidelines devised by the Legislature, but the board is free to hold someone all the way to their maximum, just because the board feels differently about the crime. Now the prosecutor is free to induce a guilty plea by negotiating a certain minimum sentence but then turn to the victim and say: "don't worry, the board will never actually release him then." This is not truth in sentencing. Whatever their minimum sentence, people should be able to rely on being able to earn their way out at that point.

There is simply no principled basis for giving the minimum sentence a different meaning, depending on the crime.

Parole grant rates have fluctuated dramatically over the last two decades. While the current board is now increasing the grant rate, it requires a statute to ensure that, no matter who is on the board in the future, the standard for parole is an objective one, not simply what those particular members feel is reasonable.

But what about public safety? Isn't it true that people who committed assaultive and sex offenses pose a greater risk to the public and we should hold them as long as possible, regardless of the minimum sentence? Contrary to common belief, that is not true. The fact that someone committed a very serious crime years or decades ago does not mean that they are dangerous today. On the contrary, these offenders have the lowest re-offense rates of any crime group.

Last August we published a research report on recidivism called *Denying parole at first eligibility: How much public safety does it actually buy?* I have provided you with copies of the executive summary, along with several figures and tables. The full report was distributed to every legislator, but we can give you another copy if you would like. It is also on our website, www.capps-mi.org.

Our database included every person sentenced to an indeterminate term after 1981 who was released for the first time, whether on parole or by maxing out, from 1986-1999. We had a total of 76,721 cases. That total included more than 2,500 homicide offenders, nearly 6,700 sex offenders and about 6,500 other assaultive offenders. Success was defined as no return to prison, either with a new sentence or for a technical parole violation, within four years of release.

The ultimate question we were asking was whether public safety is improved by keeping people in prison an extra year or two. The short answer is: very, very little. We also learned a number of other important things.

Sixty-one percent of all the prisoners we studied had been released on their earliest release date or ERD; 15% were released after serving one additional year; 14.6% were released after serving two additional years. Thus, in total, 91% were released within two years of first eligibility.

The success rate of people released on their ERD was 66%. The success rate of people released after their ERD was somewhat lower at approximately 58%. While not insignificant, this eight point difference in success rates is not great. We estimate that if everyone who was released a year or two after their ERD had been released when first eligible, it would have saved more than 2,300 beds a year or nearly 33,000 beds in 14 years. In today's dollars, the cost savings would have been nearly \$74 million a year or more than one billion dollars for the entire period. Yet the decrease in the total success rate, when everyone released on, one or two years after their ERD was combined, would have been 2.9%. That is, the success rate would have gone from 66.1% to 63.2%. The increase in returns with new sentences would have been only 1.7%. The increase in total arrests would have been 0.4%. This suggests that implementing a presumption of release at the minimum that applied to all prisoners not demonstrated to be at high risk for re-offending would substantially reduce prison spending without increasing risk to the public.

There are two other key points that our research demonstrates and a great many other studies we have cited confirm. One is that sheer length of time served bears no relationship to success. We want to incarcerate some people longer than others because they are deserving of more punishment, but more time will not improve success upon release. The average time served for

both drug and larceny offenders was 2.2 years but their respective success rates were 69% and 55%. The average time served for sex offenders and robbers was nearly identical, but the success rate of sex offenders was more than 20 points higher.

Even more telling, *within* offense groups there was little or no difference in length of time served among those who succeeded, those who came back as technical violators and those who returned with new sentences. Among released larceny offenders, for instance, those who succeeded had served, on average, 2.2 years, those who came back as technical violators had served an average of 2.0 years and those with new sentences had served 2.2 years. This similarity in time served regardless of outcome was true for every offense group. This suggests that keeping people past their minimum sentences solely based on their offense will not buy any increase in public safety.

The third key finding concerns the variables that do relate to re-offending. While age, prior record and institutional conduct are well known predictors of success on release, another critical factor is offense type. The data in Fig. 3 show that homicide, sex and other assaultive offenders have substantially lower failure rates for any reason than do financially motivated offenders like those who committed burglary, larceny and robbery. For homicide and sex offenders the success rate exceeds 77%. Moreover, the offenders we fear most rarely return to prison for repeating their crimes. Only 4.5% of all the people released returned for a new crime against a person. Only 3.1% of sex offenders returned for a new sex offense. Only 0.5% of homicide offenders returned for a new homicide. The data on sex offenders in particular, which wholly contradicts public perceptions and the basis of much release decision-making, is similar to that of eight other major studies shown in Table 6.

Excluding from a presumption of release those whose crimes carry a statutory maximum penalty of life or any term actually goes against the evidence about re-offense rates.

Ironically, releasing more of the people who used to be passed over will, in all likelihood, reduce recidivism rates overall. And there is no question that continuing to deny them parole would be costly not only to them and their families but to taxpayers and to the very operation of the criminal justice system.

We have a number of other concerns about SB 827 that, in the interest of time, I will merely note without discussion.

The bill would allow even those who receive a presumption of parole to be kept for up to 120% of their minimum sentences in order to complete treatment or because of institutional misconduct. The use of the 20% mark-up rather than a set number of months allows for very disparate treatment depending on how long a minimum is being served. Twenty percent of a one-year minimum is 2.4 months while 20% of a ten-year minimum is two years. Thus identical misconduct histories or identical needs for treatment could bring very different results.

There are no criteria for defining "serious institutional misconduct." Would a handful of very old misconducts suffice to deny parole at the minimum or must there be a pattern of recent misconducts that show assaultive behavior?

There is also no protection in the bill for prisoners who have been unable to complete required treatment programs because the MDOC has been unable to make the programs available in time.

SB 827 would limit the length of stay for first-time technical parole violators to nine months, unless the violation involved possession or use of a weapon or injury to a victim. We used to advocate

similar fixed time limits for technical violators. However, we are now more inclined to focus on whether parole should be revoked at all. A parolee who is posing a serious threat to public safety should be returned to prison without an arbitrary limit on how long he or she can be kept. However, if someone's conduct violates supervision rules but does not threaten the public, re-incarceration is too harsh and too costly. Sanctions other than imprisonment should suffice.

Finally, in order to ensure that whatever reforms are adopted are actually enforceable, we urge that the prisoner's right to appeal, eliminated in 1999, be restored, at least for people who score low risk on the board's assessment instruments. Prosecutors have the right to appeal grants of parole and they have been exercising it with increasing vigor of late. If the prisoners whose liberty is actually at stake do not have equivalent rights, an amended statute will be as toothless as the current one.

I appreciate your consideration of these concerns. If there is any way in which we can contribute further to your deliberations, we would be happy to do so.

Prisoners Serving For Common Offenses Punishable by Life or Any Term*

2008 MDOC Annual Statistical Report

Offense	Total	Minimum Sentence 15 Years or Less	Minimum Sentence 10 Years or Less
Drugs - delivery or possession, 1000+ grams	253	74	49
Solicitation of murder	34	19	15
Murder, second-degree	3,967	851	281
Robbery	5,234	4,040	3,071
Criminal sexual conduct, first-degree	4,603	2,608	1,590
Kidnapping	355	158	93
Assault with intent to commit murder	1,443	753	319
Assault with intent to commit robbery	716	575	442
Perjury	9	8	8
TOTAL	16,613	8,588 (51.7%)	5,870 (35.3%)

*Does NOT include people charged as habitual offenders under MCL 769.12 which allows life or any term for anyone with three prior felonies who is convicted of an offense with a statutory maximum of five years or more. These are typically property offenders with a history of prior property crimes.

The Justice Center's Policy Options for Michigan: An Analysis by the Citizens Alliance on Prisons and Public Spending

SUMMARY

Justice Center Proposal	CAPPS Alternative
Applies only to people sentenced after April 1, 2009	Apply to current prisoners
Presumes release on minimum, except for people whose offenses carry a maximum of life or any term	Apply to all offenses
Release may be delayed up to 120% of the minimum for "failure to complete required programs"	Apply only if failure to complete is willful on prisoner's part, not result of program unavailability
Release may be delayed up to 120% of the minimum for institutional misconduct	Establish amount of delay justified by each type of misconduct; limit age of citations
Requires release of everyone not serving for a life-maximum offense at 120% of the minimum, unless they are at very high risk of re-offending	Use set time periods for permissible delay in release beyond minimum; percentage makes actual amount of additional time served vary with length of minimum.
Limits to 9 months the time that can be served for first parole revocation for a technical violation	Only return technical parole violators who pose a demonstrated threat to public safety
Prohibit "max outs." Require even high risk offenders to be released at least 9 months before completing their maximum sentence so they get a period of parole supervision	Agree
Continue current parole board efforts to increase parole grant rate	Agree
Not mentioned	Restore opportunity for prisoners to earn modest amounts of sentence credit for program participation and institutional conduct
Not mentioned	Restore Michigan's Sentencing Commission so the impact of sentencing guidelines can be monitored and appropriate adjustments can be made



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The Justice Center's Policy Options for Michigan:
An Analysis by the Citizens Alliance on Prisons and Public Spending

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On January 22, 2009, the Council of State Governments Justice Center presented a series of policy options for Michigan criminal justice, including several designed to reduce spending on corrections. While the Justice Center options provide a useful starting point for discussion, they are modest in their vision and their impact. Significant concerns exist about how some of the options are structured and about additional options that have not been addressed. The Citizens Alliance on Prisons and Public Spending (CAPPS) suggests that variations on these options could produce much greater savings in a much shorter time without jeopardizing public safety.

Analysis

Justice Center Option 3A – Release at the Minimum

The first option for reducing corrections spending is summarized as:

“Ensure that offenders in prison serve 100-120% of their court-imposed minimum sentence. (*Effective for those sentenced after April 1, 2009.*)”

However, everyone whose crime was committed since truth-in-sentencing became fully effective *already* serves at least 100% of their minimum. Moreover, mandatory release after service of 120% of the minimum would not apply to a substantial proportion of prisoners. In more detail, this option is:

Apply a presumption of release after service of the minimum sentence to prisoners sentenced after April 1, 2009, with two exceptions. The presumption would not apply to people serving for crimes with statutory maximum penalties of life or any term, or to people who score very high risk of re-offending on a validated risk assessment instrument.

In cases subject to the presumption, release may be delayed for failure to complete required programs or for institutional misconduct, but would be mandatory at 120% of the minimum.

The parole board would retain complete discretion to deny parole up to the maximum sentence to people serving for life-maximum offenses (regardless of their actual sentence, program participation, lack of institutional misconduct or low re-offense risk) and to those who score very high risk of re-offending.

Option 3A takes two critical steps forward. It recognizes the need to place statutory limits on the parole board's exercise of discretion. It also begins to recognize that the court-imposed minimum sentence should determine the time a person serves unless there is post-sentencing conduct that reasonably justifies denying release. However, this option raises a number of questions and concerns.

1. There is no apparent justification for applying this option only to people sentenced after April 1, 2009.

Since the option involves only the parole of people who have served their minimum terms and in no way changes the court-imposed sentence, there is no legal impediment to implementing it immediately. The projections indicate that in nearly three years, this option would produce a population reduction of only 515 people. There are currently 9,000 people who have served their court-imposed minimum sentences but been denied parole. Applying option 3A to all prisoners who are now parole-eligible would presumably produce a significant immediate impact.

In addition, the purpose of this option is to constrain the exercise of inordinately broad parole board discretion. If these constraints are in fact needed, they should be implemented sooner rather than later. No explanation for failing to apply option 3A to current prisoners appears in The Justice Center report.

2. The exclusion of people serving for life-maximum offenses, regardless of their actual sentences, is unwarranted.

Before assessing this proposal, three key points should be clarified.

A. The exclusion is not only of people who are serving life sentences but of everyone whose offense carries a statutory maximum penalty up to life. Because Michigan did not revise its penal code as many states did, it still permits the judge to impose life or any term of years for many serious offenses.

- Life-maximum offenses include second-degree murder, assault with intent to murder, first-degree criminal sexual conduct, armed robbery, kidnapping and drug offenses involving 1,000 grams.
- The fact that a statute authorizes any penalty up to life in prison does not require the judge to impose a life term. In 2005, more than 15,000 people were serving for these offenses. Only 1,673 were actually serving parolable life terms. Thousands were serving minimum sentences of 10 years or less.
- Life-maximum offenses also include convictions for being an habitual offender.

- The prosecutor can choose to charge a defendant as a fourth-time habitual offender if the person's current offense carries a maximum penalty of at least five years and the person has three or more prior convictions. The judge can then impose a sentence of life or any term.
- There are no limits on the age or nature of the prior offenses.
- Under a recent Michigan Supreme Court ruling, the three prior convictions can all have arisen from the same criminal transaction. For example, a 17-year old is placed on probation for a series of criminal acts: stealing a lawn mower from his neighbor's open garage, taking the neighbor's car for a joyride and being in possession of drugs when arrested. Decades later, he is convicted of carrying a concealed weapon, which carries a maximum penalty of five years. If the prosecutor chooses to add an habitual offender charge, all three prior convictions will count, making the defendant a fourth offender. The statutory maximum sentence will be life in prison, even though the court might only impose another term of probation.

B. Because most offenses subject to life or any term of years are crimes against people and the parole board is reluctant to grant release in those cases, a large share of the prisoners currently being denied parole are serving for life-maximum offenses.

- Parole grant rates vary widely by offense, ranging from a high of 79.7% for drug offenders to a low of 15.4% for sex offenders.
- Under current parole guidelines, people who score low risk for reoffending (less than five percent chance of arrest for an assaultive offense if released) are supposed to be released unless the board has "substantial and compelling reasons to deny parole."
 - Nonetheless, in 2006, the board denied parole to nearly 45 percent of all the low risk cases they considered – almost 3,000 people.
 - Of the low risk people denied, 90 percent had committed a sex offense or other crime against a person.
- No other state gives a parole board such broad discretion in determining the length of time to be served. Prisoners cannot appeal parole board decisions and there is no other mechanism for enforcing constraints on the board's exercise of discretion.

C. Excluding life-maximum offenses from the presumption of release at the minimum is unnecessary for public safety because many of the people serving for life maximum offenses present the lowest risk for reoffending.

- Recidivism rates also vary widely by offense, but not in the manner people often believe. National and Michigan data show that reoffense rates are highest for crimes that are economically motivated and lowest for some crimes against persons.

- Fewer than eight percent of Michigan sex and homicide offenders return to prison within four years with a new sentence for any offense. They rarely return for a new sex offense or homicide.
- The rate of returns with new sentences for people convicted of burglary and larceny exceeds 24 percent.
- Length of time served bears no relationship to recidivism rates. A substantial body of research indicates that keeping people incarcerated longer does not reduce their likelihood of re-offending. It may actually decrease chances for a successful transition back to communities and families.

As proposed, this option would perpetuate the current situation in which the parole board has complete discretion to deny release, for many years and without recourse, to thousands of low-risk people based on their offense.*

There is no functional reason for enforcing the court-imposed minimum for some offenses and not others. Regardless of the offense, the minimum sentence is selected in accordance with legislative sentencing guidelines that take into account the nature and details of the offense and the offender's prior record. Victims have an opportunity to give input at the sentencing and prosecutors can appeal sentences that depart from the guidelines. Denying parole is not necessary to ensure that assaultive and sex offenders are punished more severely than drug and property offenders. Releasing people who have served their minimum terms is not an "early release" provision that is logically related to the offense.

Moreover, the charge and/or the minimum sentence often reflect plea negotiations. For example, armed robbery carries a statutory maximum of life or any term. In a case where the prosecutor believes a 5-15 year sentence is appropriate, the plea may be to unarmed robbery, which has a 15-year maximum, or to armed robbery with a sentence agreement for 5-15 years. Option 3A would presume release at five years or permit parole denial until 14 years and three months, depending on how the plea was negotiated.

Excluding life-maximum offenses from the enforcement of the minimum sentence allows the parole board to continue to usurp the roles of legislators, judges, prosecutors and defense attorneys in thousands of cases. It could ultimately affect conviction patterns by adding another complex consideration to plea negotiations. For one-third of all prisoners serving indeterminate sentences, it negates the promise that they can earn their release through good institutional conduct and program participation. It would also perpetuate the large disparity in length of stay for assaultive and sex offenders between the Michigan and national averages.

* The option does not discuss the application of current parole guidelines or any means of enforcing the existing presumption of parole for people who score low risk, absent "substantial and compelling reasons" to deny release.

Finally, failing to apply this option to life-maximum offenses misses an opportunity to substantially reduce the prisoner population and, therefore, corrections costs. With 70 percent of prisoners already being released when first eligible, it is the people currently being held beyond their minimums who must be affected for significant savings to occur. A disproportionate share of these people are serving for life-maximum offenses. It is likely that the largest pool of people whose length of stay is out of sync with national norms are the very people excluded from option 3a.

3. The selection of 20 percent as the permissible "mark-up" beyond the minimum sentence raises several questions.

Use of percentage. Employing a percentage rather than a fixed amount of time means that there could be substantial variations depending on the length of the minimum sentence. Twenty percent of a one-year minimum is 2.4 months; twenty percent of a ten-year minimum is two years. If specific behavior justifies delay in release, it should justify the same amount of delay in every case, to the extent possible.

Failure to complete treatment. Because the options are stated in general terms, the details are unclear. Option 3A states that people can be held up to 120 percent of their minimum if "there is a failure to complete required programs that are determined to reduce an offender's risk to public safety." The vast majority of such "failures" are currently attributable to the Department of Corrections' inability to provide timely access to treatment programs. Some prisoners are unable to participate because of language barriers, mental illness or developmental disability. Substantial reforms in the delivery of treatment programs have been made. However, there are still nearly 500 people on waiting lists who are within six months of their earliest release dates.

Prisoners who are willing to complete programs should not be penalized for circumstances beyond their control. Treatment can, of course, be required as a condition of parole. This exception should be limited to people who willfully refuse to complete treatment or who are in treatment at the time they reach their first eligibility date and need fewer than six months to complete it. If the definition of required programs is expanded to include academic or vocational programs proven to reduce risk, care must be taken to ensure timely access to these programs as well.

Institutional misconduct. The lack of detail also leaves unclear the number, nature and age of misconducts that might cause a 20 percent increase in time served past the minimum. An administrative rule currently gives guidance to the parole board about the amount of "disciplinary time" to be added to the minimum sentence for prison rule infractions. The amounts vary, depending on the infraction, but the most common ones carry from seven to 35 days. The consequences of the Justice Center proposal may vary widely, depending on whether if the board is required to apply the "disciplinary time" amounts spelled out in the administrative rule or is free to use any misconduct history, no matter how old or how minor, as a reason to deny release.

It should be noted that the most common misconducts are simply rule infractions like being out of place, disobeying a direct order or insolence. It is not uncommon for people to accumulate misconducts early in their sentence, before they adjust to institutional living. A broad range of punishments may be imposed at the time of the misconduct. Serious or numerous misconducts may increase a person's security classification. Thus, misconduct is penalized independently of parole denial. Also, the number and nature of misconducts are scored in risk assessment instruments. To the extent that misconduct predicts re-offense risk, it is considered by the board in that context.

Justice Center Option 3B – 9-Month Limit on Parole Revocation

The second option would limit to nine months the amount of time a technical parole violator can be required to serve the first time parole is revoked. This is a positive step. CAPPs has made similar proposals in the past. However, although there are currently 3,000 people in prison who were returned for technical parole violations, this option reduces the population by less than 300 in any given year. This may be because the option only applies to paroles revoked after April 1, 2009, and to people serving time for their first revocation and/or because only a small proportion of technical violators are kept much longer than nine months.

More to the point, this option does not confront the fundamental question of whether people should be returned to prison at all for non-criminal violations of supervision rules or for conduct that does not present a danger to the public. While graduated responses to violations are appropriate, returning someone to prison is expensive, disruptive and highly punitive. It is unclear what is gained from a nine-month prison stay as opposed to a five-month stay as opposed to weekends in jail or other unpleasant consequences. Conversely, if a parolee is truly dangerous, an automatic release at nine months may be inappropriate.

Justice Center Option 3C – Preventing "Max Outs"

This option would prohibit the board from denying release until the person has completed every day of his or her maximum sentence, then release the person into the community without any support or supervision. It would require at least nine months of community supervision on parole. More than 1,000 people released in 2007 were "maxed out." This would be a very positive change.

Justice Center Option 3D – Continuing Current Parole Board Measures

This option would simply continue current parole board actions designed to reduce the number of prisoners who are serving past their earliest release date. Clearly, any steps the board takes on its own should be encouraged. However, this option would presumably be superseded if option 3A was given immediate effect.

Since at least 2004, the parole board has periodically engaged in a continuance review project that involves reconsidering people who have been denied parole, ahead of their scheduled "next action" date, in order to alleviate the pressure on bedspace. Notably, every aspect of

options 3A, B or C could be implemented by the parole board at any time, as a matter of practice, without statutory authorization.

The Failure to Address Other Cost-Saving Options

Restore Earned Credits. Nearly every state permits prisoners to earn some amount of credit against their sentences for good conduct, satisfactory work performance, and/or participation in academic, vocational and treatment programs. Some states have increased the amount of credits they award as a method of controlling their prison populations. If 10,000 Michigan prisoners earned five days of credit per month and were then released on their minimums, the time saved for each year served would equal 1,644 beds.

Michigan used to permit prisoners to earn up to seven days a month in disciplinary credits, but that was eliminated in 1998 under the guise of "truth-in-sentencing". Everyone sentenced since then serves every day of their minimum sentence. People in Michigan's 83 county jails still earn "sheriffs' good time" (one day of credit for each six days served), which is an important means of controlling jail populations.

Earned credits reinforce positive achievements, but they only make someone eligible for parole sooner; they do not require release. Awarding modest amounts of earned credit does not make sentences any less honest, especially if the possibility of earning credit is stated on the record at the sentencing hearing. The primary effect of eliminating disciplinary credits for state prisoners was to increase the length of time served without any demonstrated benefit to public safety.

Restore Sentencing Commission. When the sentencing guidelines were adopted in 1998, the statute required the sentencing commission to periodically review their impact. With the abolition of that commission in 2002, no systematic assessments occur. Restoration of the sentencing commission would permit a comprehensive examination of the cost-effectiveness of both community-based and prison sentences. It could help ensure that drug and property offenders are not incarcerated unnecessarily and that sentences for crimes against people are proportionate to the offense.

Improve Indigent Defense Funding. The chronic underfunding of Michigan's public defense system has a direct impact on prison costs. Indigent defense counsel who are inadequately trained, lack critical resources and have inordinately high caseloads cannot provide the representation necessary to ensure that the right people are convicted and that sentences are appropriate. Convicting the wrong person is not only unjust to the defendant and a threat to public safety, it can mean spending tens of thousands of dollars on unwarranted incarceration and millions on lawsuits. Convictions on unduly high charges are less dramatic but also costly and unjust. Perhaps most common is the inability to advocate effectively for community-based alternatives to prison or for prison sentences at the lower end of the sentencing guidelines range.

Justice Center Strategies 1 and 2 – Deterring Crime and Lowering Recidivism

These strategies address deterring crime and lower recidivism. While no attempt will be made to comment on them in detail, several observations may be useful.

In regard to deterring crime, The Justice Center notes that, despite having the highest violent crime rate in the Great Lakes region, Michigan has the fewest local law enforcement personnel. The Michigan Commission on Law Enforcement Standards reports a loss of 1,587 law enforcement positions from 2001-2007. This is a direct result of a decline in state revenue sharing at the same time that Corrections' share of General Fund spending increased. CAPPS estimates that it would require virtually all of the \$90.7 million to be saved on corrections spending in 2015 just to bring the number of police officers to the 2001 level.

In regard to lowering recidivism, The Justice Center fails to address several critical needs. These include:

- the availability of community-based treatment services for mental health and substance abuse,
- the need to maintain and increase treatment programs, academic and vocational education, and family support for prisoners,
- the need to increase potential job opportunities for probationers and parolees by eliminating legal barriers to the employment of people with felony records that do not contribute to public safety.

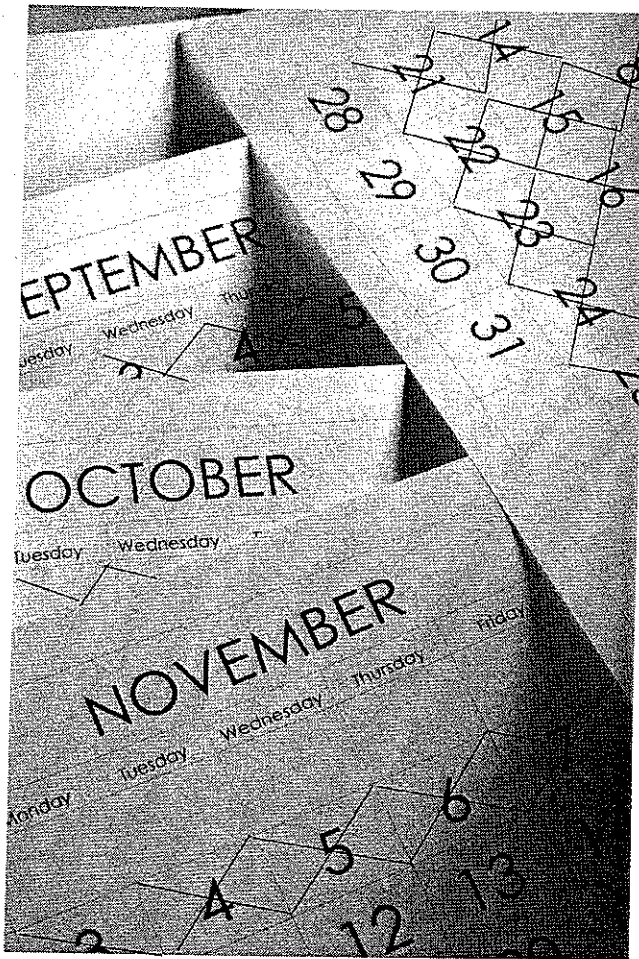


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Denying parole at first eligibility:



How much
public safety
does it
actually
buy?

A study of prisoner release and recidivism in Michigan

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Denying Parole at First Eligibility: How Much Public Safety Does It Actually Buy?

A Study of Prisoner Release and Recidivism in Michigan

Executive Summary

Widely-held assumptions about incarceration and parole are contradicted by Michigan data and national research.

Assumption Since Michigan's overall rate of sending convicted felons to prison is below the national average, Michigan does not incarcerate enough people.

Fact Michigan's overall prison commitment rate is below the national average because the state imprisons fewer drug and other nonassaultive offenders. Its commitment rate for assaultive and sex offenders is very high and, because it keeps those offenders incarcerated for a long time, Michigan's average length of stay in prison is much higher than the national average.

Assumption Longer prison sentences keep the public safer.

Fact Increased length of stay does not reduce recidivism and may actually increase it.

Assumption Half of all released prisoners commit new crimes and return to prison.

Fact The majority of former prisoners do not return within four years for any reason, even without the support services now provided through reentry programming. Of those released for the first time from 1986-99, whether paroled or discharged on the maximum, 63% did not return at all; fewer than 18% were returned with new sentences for new crimes.

Assumption Assaultive and sex offenders present a high risk to public safety.

Fact People who commit assaultive or sex offenses are much less likely to reoffend than those who commit financially-motivated crimes. Homicide and sex offenders rarely commit new crimes against persons. Characterizing these offenders as "high risk" confuses the harm from their past crimes with the likelihood they will commit new ones.

Denying Parole at First Eligibility: How Much Public Safety Does It Actually Buy?

Assumption Parole is a form of "early release" that was unintended and unanticipated by the sentencing court.

Fact In Michigan, judges set the minimum sentence according to legislative guidelines that determine how much punishment is appropriate for the offense and the offender. The minimum is often agreed to by the prosecutor during plea negotiations. While the parole board can deny release until the prisoner has served the maximum sentence, it cannot grant release until the person has served the minimum. Parole at the first eligibility date indicates the board has found no reason, based on current information, to extend incarceration beyond what was imposed by the sentencing court.

Assumption Decisions to deny parole are based on objective assessments of the risk of reoffending.

Fact Parole has routinely been denied based on the nature of the offense to people who have served their judicially imposed minimum punishment and posed a low risk of reoffending.

Assumption People who are repeatedly denied parole have terrible institutional records.

Fact While poor behavior in prison reduces the likelihood of parole for everyone, assaultive and sex offenders are less able to earn release through good conduct. Many of them "max out" despite having no serious history of institutional misconduct.

Assumption If parole decisions were made "correctly" and more prisoners were required to serve their maximum sentences, all crime by parolees would be prevented.

Fact The total prevention of new crimes by parolees would require the ongoing incarceration of tens of thousands of people who would not, in fact, commit a new offense if released. The fiscal cost would be astronomical and, because most crimes are not committed by parolees, the impact on overall crime rates would be minimal.

Assumption Denying parole for an extra year or two keeps the public substantially safer.

Fact If, from 1986-99, everyone denied parole for up to two years had been released when first eligible, 2,300 fewer beds per year would have been needed but returns with new sentences would have increased only 1.7%.

Denying Parole at First Eligibility: How Much Public Safety Does It Actually Buy?

Purpose of the Research

The Citizens Alliance on Prisons and Public Spending examined 76,721 cases of Michigan prisoners sentenced to indeterminate terms after 1981 and released for the first time from 1986 through 1999. The primary goal was to answer the following questions:

Does continuing to incarcerate people who have served their minimum sentences actually improve public safety and, if so, to what extent and at what cost?

Specifically, does denying parole at the minimum only to release a person a year or two thereafter have a substantial impact on re-offense rates?

The analysis also shed light on a number of other important questions regarding the nature and cost-effectiveness of parole decision making. In particular, because offense groups were analyzed separately, the impact of the nature of the crime on both release decisions and actual recidivism could be identified.

The Data

The data was drawn from the management information system of the Michigan Department of Corrections (MDOC). Nearly 47% of the people were released between 1986 and 1992 by the "old" civil service parole board and 53% were released between 1993 and 1999 by the "new" appointed board. Nearly 6% were discharged on their maximum sentences; the rest were paroled. They were divided into nine offense categories: homicide, sex, assault, robbery, larceny, burglary, drugs, weapons, and motor vehicles. They were similarly situated to the extent that all were released before the abolition of disciplinary credits and pre-parole community placements, dramatic revisions in drug sentences and the implementation of the Michigan Prisoner ReEntry Initiative (MPRI). Recidivism was defined as returning to prison within four years of release either as a technical parole violator (PVT) or with a new sentence for a new crime (PVNS).

Underlying Premises

Long length of stay caused Michigan prison growth.

- From 1990-2005, Michigan's average length of stay was 16 months longer than the average of other Great Lakes states.
- The Citizens Research Council (CRC) estimates that if Michigan's average throughout that period had been one year shorter, by 2005, Michigan would have had roughly 14,000 fewer prisoners.

More parole denials are a primary cause of longer prison stays.

- A 1992 change in the composition of the parole board from civil servants to appointees with a mandate to "get tough" caused parole approvals to decline substantially.
- CRC estimates that if pre-1992 release rates had continued through 2006, an average of 2,500 more people would have been released per year.
- The proportion of prisoners who were past their earliest release date (ERD) and thus eligible for parole grew from 16% (5,687 people) in 1991 to 31% (15,950 people) in 2006.

Denying Parole at First Eligibility: How Much Public Safety Does It Actually Buy?

- Increased parole denials reflected a conscious choice to keep assaultive and sex offenders longer based on their crimes, not their risk of re-offending. The proportion of people who scored low risk on the MDOC's own parole guidelines who were granted parole fell from 81% in 1996 to 55% in 2006. For low risk sex offenders and people whose crimes involved a death, 2006 grant rates were only 13% and 28%, respectively.

The Findings

The research supports seven key findings and numerous related ones.

- 1. Success rates varied greatly by offense type. Homicide and sex offenders re-offended the least while those whose crimes were financially motivated returned to prison the most.**
 - a. Overall, about 63% of people released did not return to prison within four years. Nearly 20% were returned for technical parole violations and nearly 18% returned with new sentences for new crimes.
 - b. Homicide (80.1%) and sex offenders (77.6%) had the highest success rates and their rates of return with new sentences were below 8%.
 - c. At the other extreme, success rates for the larceny and burglary groups were below 55% and returns with new sentences exceeded 24%.
- 2. New crimes against persons by released prisoners were rare. Among those who returned with new sentences, larceny was the most common new crime.**
 - a. Larceny, drugs and burglary accounted for nearly 63% of all the new convictions for which people were returned.
 - b. Only 4.5% of more than 76,000 people released during the 14-year period were returned for a new crime against a person.
 - c. Larceny and motor vehicle offenders were most likely to repeat their offenses.
 - d. Of 2,558 homicide offenders, 69 (2.7%) were returned for any new crime against a person and 14 (0.5%) were returned for another homicide.
 - e. Of 6,673 sex offenders, 280 (4.2%) were returned for any new crime against a person and 204 (3.1 %) were returned for a new sex offense.
 - f. Returns with new offenses were nearly 50% greater for people who maxed out than for parolees.
 - o Re-offense patterns among max outs were similar to those of parolees, with sex (13.6%) and homicide (16.3%) offenders returning least often and larceny (35.6%) and robbery (32.3%) offenders returning most often.
 - o Even among more than 4,000 max outs, three-quarters did not return in four years.
 - g. Numerous studies confirm that Michigan re-offense data is like that of other states.
- 3. The impact on parole decisions of characteristics well known to predict success varied widely by offense.**
 - a. Greater age at release, first incarceration and little or no institutional misconduct, were associated with greater success within every offense group.
 - b. These characteristics occurred most frequently in the groups with the lowest reoffense rates but that did not explain why success rates differed so much among groups.

Denying Parole at First Eligibility: How Much Public Safety Does It Actually Buy?

- c. While having an "A" prefix (no prior Michigan prison term) and a good institutional record increased the chance of release when first eligible, they by no means guaranteed it, especially for people convicted of assaultive and sex offenses.

Parole was commonly denied based on the nature of the past crime, not the actual likelihood the person would commit a new one.

Overall

- a. Overall, 61.4% of released prisoners were paroled when they first became eligible. However, this ranged from 78.8% of motor vehicle offenders and 75.5% of drug offenders down to 32.6% of sex offenders.
- b. Overall, an additional 15.2% were released one year after their ERD and another 14.6% were released within two years of their ERD. Thus, on average, more than 91% were released within two years of first eligibility.
- c. In the sex offender group, fewer than 74% were released within two years. Nearly 14% were required to max out.

Differences between the "old" and "new" boards

After the parole board was restructured in late 1992, disparities in release time increased dramatically for people convicted of assaultive and sex offenses.

- a. Overall, 2,560 people who would have been released on or within one year of their ERD by the old board were continued for two, three, four or more years by the new board.
- b. An additional 899 people were held to their maximums. The proportion of sex offenders required to max out nearly tripled.
- c. Increased parole denials by the new board caused the average length of stay to grow by 4.8 months, but the amount of change varied greatly by offense.
- d. Changes in time served due to parole board decisions (as opposed to longer sentences) were minimal for drug, motor vehicle, larceny and burglary offenders. However, the board increased length of stay by nearly 10 months for robbery offenders, 12 months for homicide offenders and 16 months for sex offenders.
 - o Overall, under the old board, people served 92.6% of the average minimum sentence while under the new board they served 106%. Sex offenders went from serving 94% of their average minimum to 124%.
 - o For the seven-year period from 1993-1999, the new board's policies resulted in 15,601 additional years served, requiring 2,229 more beds per year than would have been required under the old board's policies. Nearly 30% of the additional beds were for sex offenders.

5. Sheer length of time served bears no relationship to success.

- a. There is no magic number of years in prison that will guarantee success. People in different offense groups served similar amounts of time but had very different outcomes.
- b. Serving more time in prison does not improve success upon release. On the contrary, in the majority of offense groups, serving more time was associated with failure.
- c. Within offense categories there is not a lot of difference in the amount of time served by those who succeed and those who return to prison, either as technical violators or with new sentences for new crimes.

Denying Parole at First Eligibility: How Much Public Safety Does It Actually Buy?

- d. Numerous studies done over several decades confirm that keeping people in prison longer, especially for no more than a few additional years, does nothing to enhance public safety and may be counterproductive.

6. Incarcerating people for an additional year or two after they reached their earliest release date had very little impact on success rates in general and returns with new sentences in particular.

On average, the people continued for one year were somewhat less successful than those released when first eligible, but keeping people for two, three or four years made virtually no additional difference. However, variations among offense groups were substantial.

- a. Among those released one year after their ERD, the decline in success rates ranged from 1.8% for motor vehicle offenders to 14.2% for the homicide group.
- b. Among those released two years after their ERD, the additional decline in success ranged from zero for homicide and assault offenders to 5.9% for the robbery group.
- c. The extent to which continuances for a year or two reflected accurate risk prediction also varied by offense group. For five groups (homicide, sex, motor vehicles, assault, drugs), those held for an additional year still had success rates from 63%-78% and those continued for two years still had success rates of 60-75%.

To avoid increasing returns for new crimes against people from 4.5% to 6.9%, 9,664 assaultive and sex offenders who would not have returned with any new offense were imprisoned from one to four additional years after they became eligible for parole.

- a. In the homicide group, 849 of 885 people who were kept up to four years past their ERD, or 95.9%, were not returned to prison for any new crime against a person, compared to 98.4% of people released when first eligible.
- b. In the assault group, 2,456 of 2,646 people who were kept up to four years past their ERD, or 92.8%, were not returned to prison with a new sentence for any new crime against a person, compared to 95.7% of those released when first eligible.
- c. In the sex offense group, 3,807 of 3,998 people who were kept up to four years past their ERD, or 95.2%, were not returned to prison within four years with a new sentence for any new crime against a person, compared to 97.1% of those released when first eligible.
- d. In the robbery group, 3,521 of 3,894 people who were kept up to four years past their ERD, or 90.4%, were not returned to prison within four years with a new sentence for any new crime against a person, compared to 93.7% of those released when first eligible.

7. If everyone denied parole for up to two years had been released when first eligible, it would have saved nearly 33,000 beds over 1 years, or more than 2,300 beds a year, on average. The impact on overall arrest rates would have been virtually imperceptible.

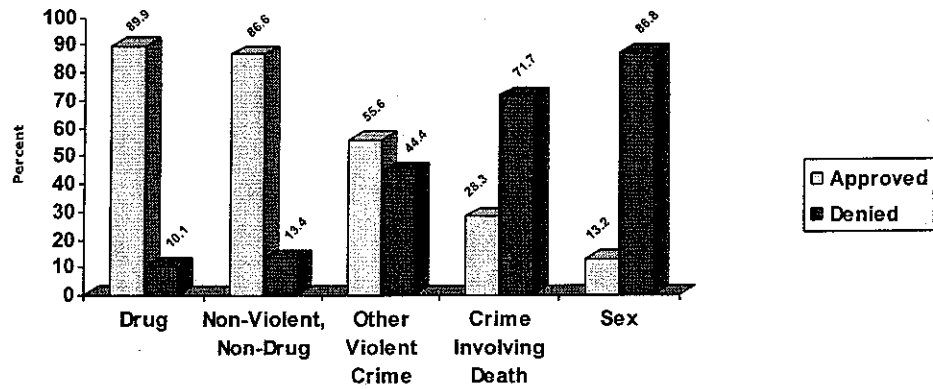
- a. The overall success rate of people released on their ERD would have declined by fewer than three points.
- b. The overall rate of returns with new sentences would have increased by only 1.7 points.
- c. Annual arrests would have increased by less than 0.4%.
- d. The cost savings, in today's dollars, would have exceeded \$1 billion for the entire period and averaged nearly \$74 million a year.

Denying Parole at First Eligibility: How Much Public Safety Does It Actually Buy?

Implications of the findings

1. Relying on lengthy incarceration as a crime control strategy is not a cost-effective policy.
2. Michigan can safely reduce its incarceration rate to the levels of comparable states while continuing to adequately punish the most serious offenders.
3. Sentence length should reflect appropriate punishment but should not assume that exceedingly long sentences are necessary to prevent reoffending. Sentencing guidelines for assaultive, sex and habitual offenders should be reevaluated.
4. Substantially increasing the rate of parole on the earliest release date would reduce the prisoner population without threatening public safety. In particular, eliminating the frequent delay of parole for one or two years would save significant amounts of money without releasing anyone "early" or causing more than a minimal change in success rates.
5. Establishing a statutory presumption of parole on the minimum for all prisoners, subject to individualized risk assessments, would avoid unnecessarily imprisoning people who have served their punishment and are at low risk for reoffending.
6. Current parole guidelines which account for institutional misconduct, prior record and current age are adequate to identify an individual's statistical risk for reoffending. However, they should be adjusted to accurately account for the nature of the offense.
7. Since time served does not relate to success on release, the use of sentence reductions or community placements as incentives for good behavior would not reduce public safety and might increase it by encouraging self-discipline and program participation in prison and a structured reentry to the community.
8. The application of stringent supervision conditions to whole categories of parolees and of employment and residence barriers to whole categories of people with criminal convictions is not necessary to protect the public. The selective use of parole conditions and of work and residence related prohibitions, based on actual risk, would be fairer and more cost-effective.
9. Since many former prisoners will not reoffend in any event, reentry efforts will be most cost-effective if targeted at the people who are at highest risk for reoffending, such as by providing job training and placement for those who committed financially motivated crimes and treatment for those suffering from mental illness or substance abuse.
10. In order to make realistic and responsible policy choices at every stage of the criminal justice system, we need to better understand what distinguishes those former prisoners who do not reoffend from those who do. Research should focus not only on which post-conviction programs are effective but on which offender characteristics correlate with success even in the absence of programs.

Figure 2. Parole Decisions for Cases with High Parole Guidelines Scores - 2006 *



*Crime type passed on a progression through all active sentences - if sex crime, then sex crime; if not, then crime involving death; if not, then other violent; et cetera.

Source: Michigan Department of Corrections

(5/30/2007)

Figure 3. Success/Failure Rates By Offense Group -- All Cases

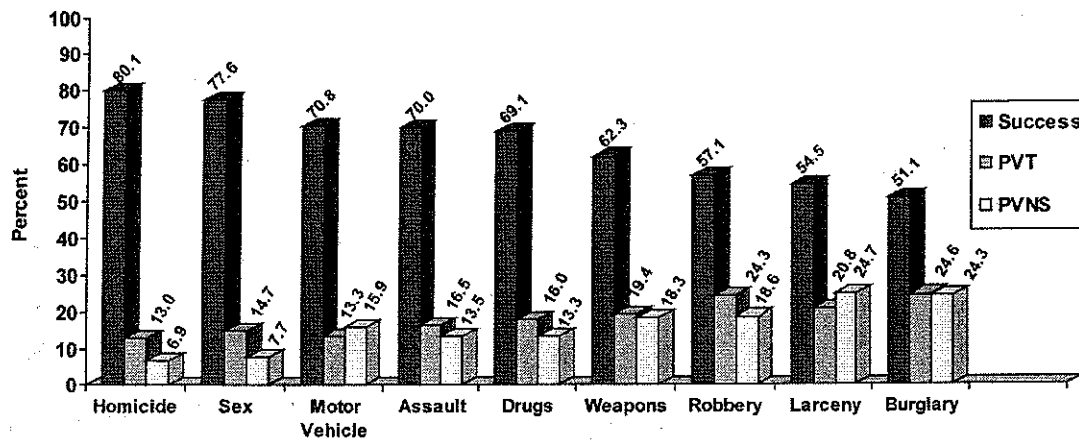


Table 6. Sex Offender Recidivism Rates

Study	Total Cases	New Sex Crime	Any New Offense	Follow-up Period	Recidivism Measure
Michigan	6,673	3.1%	7.5%	4 years	Return to prison
Bureau of Justice Statistics	9,691	3.5%	24.0%	3 years	Reconviction*
Washington	4,091	2.7%	13.0%	5 years	Reconviction
California	3,577	3.4%	7.2%	10 years	Return to prison
California	4,204	3.2%	7.9%	5 years	Return to prison
Ohio	879	8.0%**	14.3%	10 years	Return to prison
Minnesota	3,166	5.7% 3.2%	25.4% 8.6%	3 years 3 years	Reconviction* Return to prison
New York	13,890	2.1%	7.8%	3 years	Return to prison
Indiana	3,615	1.9%	11.2%	3 years	Return to prison

*includes misdemeanors

**also found that 1.4% had parole violations for behavior constituting a sex offense

Table 15. Repeat Crimes Against Persons by Release Past ERD

	ON		1 Yr. Past		2 Yrs. Past		2-4 Yrs. Past		>4 Yrs. Past	
	No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent
Homicide										
Total Rel'd	1,559		281		359		245		105	
No new offense	1,492	95.7%	251	89.3%	325	90.5%	211	86.1%	95	90.5%
Homicide	6	0.4%	2	0.7%	3	0.8%	2	0.8%	0	0
Assault	7	0.4%	5	1.8%	2	0.6%	3	1.2%	3	2.9%
Sex	6	0.4%	0	0	3	0.8%	4	1.6%	2	1.9%
Robbery	7	0.4%	5	1.8%	1	0.3%	6	2.4%	1	1.0%
Total new person	26	1.6%	12	4.3%	9	2.5%	15	6.0%	6	5.8%
Assault										
Total Rel'd	3,722		910		1,159		577		141	
No new offense	3,317	89.1%	769	84.5%	954	82.3%	471	81.6%	120	85.1%
Homicide	20	0.5%	7	0.8%	9	0.8%	6	1.0%	0	0
Assault	82	2.2%	35	3.8%	46	4.0%	18	3.1%	5	3.5%
Sex	25	0.7%	4	.4%	11	0.9%	12	2.1%	5	3.5%
Robbery	35	0.9%	9	1.0%	21	1.8%	12	2.1%	1	0.7%
Total new person	162	4.3%	55	6.0%	87	7.5%	48	8.3%	11	7.7%
Sex										
Total Rel'd	2,170		919		1,832		1,247		473	
No new offense	2,043	94.1%	825	89.8%	1,694	92.5%	1,145	91.8%	433	91.5%
Homicide	4	0.2%	1	0.1%	4	0.2%	0	0	1	0.2%
Assault	6	0.3%	5	0.5%	11	0.6%	11	0.9%	0	0
Sex	45	2.1%	40	4.4%	55	3.0%	43	3.4%	20	4.2%
Robbery	7	0.3%	5	0.5%	10	0.5%	6	0.5%	4	0.8%
Total new person	62	2.9%	51	5.5%	80	4.3%	60	4.8%	25	5.2%
Robbery										
Total Rel'd	4,825		1,330		1,644		920		282	
No new offense	4,099	85.0%	1048	78.8%	1,257	76.5%	714	77.6%	214	75.9%
Homicide	28	0.6%	9	0.7%	12	0.7%	12	1.3%	6	2.1%
Assault	59	1.2%	20	1.5%	32	1.9%	30	3.3%	12	4.2%
Sex	26	0.5%	11	0.8%	14	0.9%	5	0.5%	9	3.2%
Robbery	194	4.0%	70	5.3%	107	6.5%	51	5.5%	18	6.4%
Total new person	307	6.3%	110	8.3%	165	10.0%	98	10.6%	45	15.9%